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No. 76

In the Supreme Court of the United States

OCTOBER TERM, 1957

REBECCA MAISENBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Court of Appeals (App. 31-33) is reported at 238 F. 2d 282. The opinion of the District Court (R. 35-37; App. 26-28) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 26, 1956 (App. 30). The petition for a writ of certiorari was filed on February 4, 1957, and was granted on April 1, 1957. 353 U. S. 922. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The questions common to this case and the companion *Nowak* case, No. 72, are set forth in the government's brief in No. 72 (N. Govt. Br., p. 2). In addition, the following additional question is now raised in this case:

Whether the fact that the new basis for denaturalization set forth in Section 340 (a) of the Immigration and Nationality Act of 1952—"concealment of a material fact or by willful misrepresentation"—might possibly be construed more broadly than "fraud" or "illegality" under Section 338 (a) of the Nationality Act of 1940, presents any problem pertinent to this case, since the "concealment" and "misrepresentation" charged and proved here were treated as fully the equivalent of "fraud," and "illegality" was not charged at all.

STATEMENT

1. Petitioner was born in Russia in 1901 and arrived in the United States in 1912 (App. 22). She was admitted to United States citizenship in the United States District Court for the Eastern District of Michigan on January 24, 1938 (App. 4, 16). In March, 1953, in the same court, pursuant to the Immigration and Nationality Act of 1952, the United States Attorney filed a complaint which alleged that her citizenship was obtained by concealment of material facts and by willful misrepresentation, in that in her Preliminary Form A-2214 for a Petition for Naturalization, filed June 30, 1937 (App. 3, 23), she answered "No" to a question (Question 28) which read, "Do you belong to

or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?" The complaint alleged that from 1930 until the date of her naturalization she was a member of the Communist Party, and that to her knowledge the Party during the years of her membership prior to naturalization, 1930-1938, advocated the violent overthrow of the United States Government (App. 2-8). The complaint also alleged that petitioner concealed material facts and testified falsely in her petition for naturalization filed on October 22, 1937 (in stating, *inter alia*, that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, and that she renounced all allegiance and fidelity to the Union of Soviet Socialist Republics), and in her oath of allegiance on January 24, 1938 (in stating that she would support and defend the Constitution and laws of the United States against all enemies foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation without any mental reservation or purpose of evasion) (App. 3).

The complaint also alleged that her representations in these particulars were untrue, and that she knew they were untrue, but concealed the true information (App. 6) "in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the Court that her petition

be granted; to preclude inquiry by the Court concerning her qualifications for citizenship; and to procure naturalization in violation of law.”

Attached to the complaint was an affidavit by an attorney of the Immigration and Naturalization Service, based upon a review of petitioner's Service file, which was similar to the one filed in the *Nowak* case, except it did not state that petitioner was specifically asked about membership in the Communist Party by the naturalization examiners (App. 8-12). The full text of the affidavit is set forth in the Appendix, *infra*, pp. 25-29.

2. The evidence in support of the judgment of denaturalization may be summarized as follows:

Petitioner admitted executing the Preliminary Form for Petition for Naturalization containing Question 28 (*i. e.*, “Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?”) (App. 22; Tr. 11-12); the petition for Naturalization (App. 2, 16, 24-25; Tr. 12-13); and the oath of allegiance (App. 3, 16).

Witness Nowell testified that, during the period of his membership in the Communist Party from June 1929 to the end of 1936,¹ he attended several hundred

¹ As in No. 72, Nowell described his various positions in the Michigan District of the Communist Party (Tr. 19-21), his directorship of the Workers' School in Detroit (Tr. 36), his work with the Daily Worker and the Workers' Book Store (Tr. 20, 36-37), and his attendance as a student first at the District School and then at the Lenin Institute in Moscow, Russia (Tr. 37-39, 68). He also testified that he attended meetings of the Anglo-American Commission of the Communist International in

closed Communist meetings with petitioner Maisenberg, on an average of about two a week (Tr. 19, 45, 74). Nowell first met her in 1929, and after several interviews with her, he and the organizational secretary of the Michigan District of the Communist Party recruited her into the Party as a member (Tr. 42, 69-71, 75). Nowell and the District Organizational Secretary, in order to insure that petitioner was in agreement with the aims of the Party before recruiting her, explained the program, policies, and final objective of the Party to her, including the ultimate aim of violent overthrow of the government, and she stated her agreement with those principles (Tr. 50, 58). This procedure was followed in this instance because petitioner Maisenberg had a good understanding of the Party when she came in, and did not need the indoctrination course given less advanced persons who were accepted as probationary members for training in the basic principles of Communism (Tr. 99-100, 102-103). Following her induction, Mrs. Maisenberg became first a unit organizer, then the organizer of the Oakland subsection in Detroit, and finally a member of the Michigan District Committee and organizer of Section One when Nowell left the Party in 1936 (Tr. 44). Nowell attended meetings of her unit frequently in the period 1930-1935 to give reports to the District Bureau and he became a member of her unit in 1935 (Tr. 45.) He saw her pay Communist dues in 1935 and 1936 (Tr. 44).

Moscow, and explained the structure of the Communist Party of the United States and its relationship to the Communist International (Tr. 22-30, 38-40).

As section organizer, the petitioner transmitted the decisions of the District Bureau to the section membership. She directed the general Party membership through the Section Bureau and the unit organizers (Tr. 46). She also interpreted policies and decisions of the Central Committee set forth in theoretical articles (Tr. 48). Nowell testified concerning a meeting in late 1934 or early 1935 which was held to explain to the membership the abolition of the Trade Union Unity League in accordance with a current educational campaign in the Party to prepare the members for a tactical reorientation prior to the Seventh National Congress of the Communist International. Petitioner gave the District Bureau report to the section membership and explained certain phases of this change. She told the section delegates that the "essential line of the Communist Party", which included "the overthrow of the system and government and the establishment of a Soviet America", had not changed (Tr. 106).

Nowell described other section meetings in Detroit Communist Headquarters, and elsewhere, which petitioner attended, where District Organizers Smees and Weinstone explained the basic policies of the Communist International, including "the overthrow of the government" and "breaking it up and establishing the dictatorship of the proletariat in the form of the Soviet". They explained that the tactical reorientation of the Party did not change that basic policy (Tr. 108).

Government witness Reno testified that he attended about 200 or more closed Communist meetings with

petitioner Maisenberg during the period of his membership from January 1931 to May 1942. Some of these were meetings of the general membership, section membership meetings, section organizer meetings, and meetings of the District Committee (Tr. 130, 136). In addition to other high Communist posts in Michigan and other states, Reno was section organizer of the East Side Section in Detroit in 1931, Organizational Secretary of the Michigan District in 1932 until February or March 1933 and again in late 1934 and 1935, and an instructor in the Workers' School in Detroit where he instructed unit and section functionaries in Marxism-Leninism, Problems of Communist Party Organization, trade union problems, and other subjects (Tr. 131-135, 142). Reno first met the petitioner in late 1931 when he would see her at weekly section organizers' meetings which she attended as the Section Organizer of the Oakland Section of Detroit (Tr. 136). Aside from this position, Reno testified that she was an organizer in other sections (Tr. 137-138) and a member of the District Committee of the Communist Party in Michigan from 1933 through 1938 (Tr. 137).² During his acquaintance with her, he had conversations with her about section business, the recruitment of new members, the application of Party policies in her section, and distribution of the Daily Worker and Communist Party literature (Tr. 141).

² As Organizational Secretary of the Michigan District of the Communist Party, Reno was responsible for the rolls and records of the Party (Tr. 135).

Government witness Stewart testified that he joined the Communist Party in 1931 and, aside from holding various offices in his Communist unit, he was an alternate member of the Michigan District Bureau (Tr. 125-126). Stewart testified that he attended a Communist school, the Workers' School, at Camp Liberty near Detroit, with petitioner Maisenberg from December 10th or 12th, 1931, to February 2, 1932 (Tr. 126-127, 150). The students, who were either selected or elected by their units to attend, lived at the school during their period of study and were taught by members of the District Bureau (Tr. 151-152, 154, 163). The curriculum at the school included the study of the Communist "classics" such as Marx's "Communist Manifesto", Lenin's "State and Revolution" and other Communist literature (Tr. 149, 153, 174). The students studied the history of the Russian Revolution as a guide for the eventual overthrow of the United States Government (Tr. 173, 234-235). District Bureau member Al Goetz told the class that the aim of the Communist Party was revolution. Other instructors stated that the Communist Party advocated a program of class struggle and revolution through violence, in accordance with the purpose of the Third International (Tr. 155, 157-159, 168, 227, 229-230). The students were taught that the ultimate aim of the Party was the establishment of the dictatorship of the proletariat and "that capitalism will not die, it has to be killed" (Tr. 157). They also studied Party structure throughout the world (Tr. 156), and learned that the Communist Party of the United States was a section of the Communist International (Tr. 170).

Stewart transferred from another unit to Section One in Detroit of which petitioner Maisenberg was the Section Organizer in 1934. He attended closed meetings with her about once a month from that time until early 1937 (Tr. 177-178, 182-183). He heard her discuss the "Org Letter," a communication from the District headquarters containing directives to be discussed by each section and unit of the Party (Tr. 183-184, 196-197). She also spoke of the necessity of building up the Party and circulating Communist literature to promote its revolutionary program (Tr. 202, 204).

Witness Syrakis testified that he was a Communist Party member in Detroit in 1934 and until September 1935, serving as the secretary of the Greek Political Bureau (Tr. 284-285). He first met the petitioner in the first part of 1935 at a closed general membership meeting at which Earl Browder explained the reasons that the Soviet Union joined the League of Nations (Tr. 285-286). Petitioner sat with the Party functionaries in the presidium (Tr. 286). Syrakis also attended other closed meetings with petitioner at the Communist Party headquarters and the Greek Workers Club (Tr. 287). At one such meeting, she explained that the Party was running candidates in the Michigan elections to show its strength, and that (Tr. 288) "we would need that strength when the time comes to overthrow the government" (Tr. 288).

In 1935, Syrakis attended a Party school at Communist Party headquarters where government witness Reno was the instructor and petitioner helped keep the school records. At this school, the students were

taught the use of the strike as a weapon to weaken the capitalistic classes, the organization of the Party, and the theory of the United Front (Tr. 288-292, 307-308). Petitioner gave a speech at this school in which she explained that the Communist Party had to be strong and utilize its power among the working classes "so when the time comes we will have them as our allies for the ultimate aim" which was "to overthrow the government by force" (Tr. 288-290, 292, 305).

Witness Elder joined a professional unit of the Communist Party in 1936, and during the period 1938-1941 was the financial secretary and literature distributor for the Twelfth Street Section in Detroit (Tr. 311-313). The petitioner was the Literature Director of the East Side Section during this period. Aside from other duties she distributed the Daily Worker in that section (Tr. 315, 322). Elder first met her at a meeting in the Finnish Hall in Detroit in 1936, where District Organizer Weinstone spoke. He saw her at other closed meetings at Yeman's Hall in Hamtramck, at the Mirror Ballroom where Earl Browder spoke, and at another meeting at the Jericho Temple in 1942 (Tr. 314, 318-322, 326). At the meetings at the Finnish and Yeman's Hall, petitioner gave a report on Communist recruiting for her section (Tr. 316-317). She also talked at Communist Party schools which Elder attended (Tr. 313-314, 317).

Witness Baldwin joined the Communist Party in May 1943 in Detroit and remained a member until February 12, 1952 (Tr. 247-248). In 1943, the witness was membership director of a Communist club; in the fall of 1946, she was the secretary of the Communist

organ, the Michigan Herald; in 1947, she was assistant membership dues secretary of District Seven of the Communist Party; in 1948, she was membership director of the Auto Miscellaneous Section; and in 1950, when the Party "went underground", she became a group leader in the Party (Tr. 247-251). The witness knew petitioner in 1944 as club president of the Oakland Communist Club, and later as the literature director of the Communist Book Store of District Seven, and a member of the State Board of the Communist Party. As literature director, petitioner's duties included distributing Communist Party literature to the clubs through the section organization (Tr. 254). This literature included the Marx, Lenin and Engels classics, and such periodicals as Political Affairs (which was sent directly from the Educational Department of the Central Committee of the Party in New York), Masses and Main Stream, The Daily Worker, and the Michigan Herald (Tr. 255).

Witness Baldwin attended approximately a hundred meetings with the petitioner in 1944 and prior thereto (Tr. 252-254). In the fall of 1944, the witness attended a closed meeting of petitioner's Communist club and saw her at the State Convention of the Communist Party that year (Tr. 252-253).

3. In addition to the foregoing testimony, both parties entered into a stipulation (App. 18-21; Tr. 12-16) providing, *inter alia*:

1. That if John Lautner were to testify in these proceedings he would testify that he was an active member and functionary of the Com-

munist Party of the United States from November 1929 to about January 1950;

2. That if Frank Meyer were to testify in these proceedings he would testify that he was an active member and functionary of the Communist Party of the United States from 1934 through 1945;

3. That if called as witnesses to testify in this proceeding John Lautner and Frank Meyer would testify that it was their understanding, on the basis of their membership, training, experience, and activities in the Communist Party of the United States and on the basis of the documents, pamphlets and literature hereinafter mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period of their membership, the Communist Party of the United States advocated, taught, and advised the overthrow of the government of the United States by force and violence;

4. That if both John Lautner and Frank Meyer were to testify in these proceedings they would testify that the following literature was circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period from 1930, until the termination of their membership in the Communist Party of the United States:

(a) "The Communist Manifesto", by Carl Marx and Frederick Engels, by International Publishers, Inc.;

(b) "State and Revolution", by V. I. Lenin, copyrighted 1932 by International Publishers, Inc.;

(c) "Left Wing Communism and Infantile Disorder", by V. I. Lenin, copyrighted by International Publishers, New York, 1940;

(d) "Program of the Communist Internationale", copyrighted by Workers Library Publishers in 1929, third edition printed in February 1936;

(e) "Foundations of Leninism", by Joseph Stalin, copyrighted in 1939 by International Publishers, Inc.;

(f) "The Communist Party: A Manual on Organization", by J. Peters, Published in 1935 by the Workers Library Publishers;

(g) "The Struggle Against Imperialist War and the Tasks of the Communists", published by the Workers Library Publishers, second edition of July 1934;

(h) "Why Communism", by M. J. Olgin, published by Workers Library Publishers, December 1933;

(i) "Why every worker Should Join the Communist Party", published by Workers Library Publishers, Inc., no printing date being shown;

(j) "Problems of Leninism", by Joseph Stalin, copyrighted in 1934 by International Publishers Company, Inc.;

(k) "The Ultimate Aim", copyrighted in 1935 by International Publishers Company, Inc.;

(l) "Report to the Eighth Convention Communist Party", by Earl Browder, 1934, published by Workers Library Publishers;

(m) "Resolutions of the Seventh Congress of the Communist Internationale", published in 1935, Workers Library Publishers;

(n) "The Twenty-One Conditions of Admission into the Communist Internationale", by O. Piatnitsky, published by Workers Library Publishers; published February 1934.

4. The District Court first observed that (App. 26) "This is an action to cancel defendant's certificate of naturalization on two grounds (1) concealment of a material fact, and (2) wilful misrepresentation." The court found that (App. 26) "The proof is similar to that found in the case of *United States v. Nowak*, decided July 15, 1955 by this court," and on this basis held (App. 26):

* * * that defendant did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence; (c) that she was not a person of good moral character attached to the principles of the constitution of the United States and (d) well disposed to the good order and happiness of the same, and that, on the contrary, she represented that (a) she was a person of good moral character (b) attached to the principles of the constitution of the United States (c) well disposed to the good order and happiness of the same, and (d) not a member of any group opposed to those principles or having as an objective the overthrow of the government of the United States by force and violence.

It is apparent, therefore, that this court has adequate grounds for the cancellation of her citizenship.

The opinion thus finds that petitioner swore falsely and concealed material facts in her Preliminary Form for a Petition for Naturalization, in her Petition for Naturalization, and in her oath of allegiance as charged in the complaint, in that, as in the *Nowak* case, the proof established that she was a Communist Party member with knowledge of the fact that that organization taught and advocated the violent overthrow of the United States Government at the time of her naturalization. The District Court thereupon entered a judgment setting aside the 1938 decree which had made petitioner a citizen (App. 26-28).

In a single opinion, the Court of Appeals affirmed the judgments below in both the instant case and *Nowak's* case (App. 30; N. Pet. App. 6a).

SUMMARY OF ARGUMENT

I

Petitioner adopts all the pertinent arguments set forth in the petitioner's brief in *Nowak*, No. 72. Since petitioner thus places her case on a parity with *Nowak's*, we also adopt for this case our argument in the Government's brief in that case, subject to two points of explanation:

A. This petitioner conceded in the courts below the sufficiency of the evidence and the validity of the findings in every aspect except that the District Court had found that the "objective" of the Communist Party was the overthrow of government, rather than that the Party "taught" or "advocated" overthrow. We discuss this issue in *Nowak* (N. Govt. Br., pp. 101-105). The evidence in this case overwhelmingly proves, not

only petitioner's membership, and the teaching and advocacy of overthrow by the Party, but also that she was fully aware of that fact, that she approved of the principle, and that she herself taught and advocated that principle on the Party's behalf. Every aspect of fraud was proved by ample evidence.

B. Secondly, petitioner's adoption of the argument in *Nowak* that Question 28 of the Preliminary Form for Petition for Naturalization was equivocal in its language would not, even if well taken, entitle her to a reversal. Her cancellation order was clearly based, in addition, on her misrepresentations and concealments in respect to her qualifications for citizenship in her petition for naturalization and in her oath of allegiance. We believe this also to be true for *Nowak*, but in petitioner's case there can be no doubt whatever.

II

The only additional issue raised by petitioner is her assertion that the new basis specified in Section 340 (a) of the Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451 (a); see N. Govt. Br. p. 5)—the provision for cancellation on “the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation”—is ambiguous in two respects. She contends that (1) the new language, which was substituted for the term “fraud” used in Section 338 (a) of the Nationality Act of 1940, is capable of being construed so broadly as to authorize cancellation in cases not involving “the kind of fraud which traditionally vitiates judgments” and

hence is capable of being unconstitutionally applied, and that (2) the elimination of illegality as a basis for denaturalization in the new Act presents a problem in those cases where fraud cannot be proved. But neither of these questions, even if substantial, is relevant to the disposition of this case.

A. The allegations of the complaint and the findings of the District Court are plainly based on facts which spell out traditional fraud, and counsel agreed in their colloquy before the District Court that Section 340 (a) of the new Act was being no more broadly applied in this case than the former law. It is therefore unnecessary to consider hypothetical cases arising under the new Act where cancellation is sought on less than traditional fraud. *Watson v. Buck*, 313 U. S. 387.

B. The same argument applies in respect to the elimination of illegality as a basis of cancellation under the new Act. Petitioner's denaturalization was neither sought nor granted on the basis of illegality in its procurement, but only on the basis of fraud. Whatever problems may be engendered under the new Act in that respect are not before the Court in this case.

ARGUMENT

Petitioner adopts in her brief in this Court (M. Br., p. 11) "all of the pertinent arguments set forth in the Petitioner's brief in Nowak" (No. 72). In addition, since her denaturalization was predicated on Section 340 (a) of the Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451 (a)), which substitutes "concealment of a material fact or by willful misrepresentation" as the basis for cancellation for the

former grounds of "fraud" and "illegality" under the Nationality Act of 1940, 8 U. S. C. (1940 ed.) 738 (a) (N. Govt. Br. pp. 4-5), she argues that the new language is uncertain in its meaning, and if too broadly applied would deprive her of due process.

I

Since petitioner thus places her case on a parity with that of petitioner Nowak in No. 72, we shall not reargue those issues here, but rather adopt our argument in the Government's *Nowak* brief, subject to two points of explanation:

A. We assume from the fact that petitioner Nowak attacks the sufficiency of the evidence in support of the cancellation order that petitioner Maisenberg adopts the same contention. The record, however, indicates beyond a doubt that this petitioner conceded her membership in the Communist Party. Defense counsel stated at the conclusion of the trial (Colloquy at conclusion of trial, p. 45), "I don't think there is any question on membership here. * * * I am not raising that question." When questioned further by the court on this admission "that she was and is a member of the Communist Party," counsel stated (*ibid.* p. 46), "I don't deny that it has been proved to the satisfaction of the court, and there is no issue raised here on the record on that." Even if this concession had not been made, testimony as to closed meetings that she attended numbering in the hundreds, her offices in the Party (including unit organizer, subsection organizer, section organizer, member of the Michigan District, section literature director, club president of the Oakland Communist Club, literature director of the Com-

munist Book Store, and member of the State Board of the Communist Party), and the other evidence concerning her membership, from 1929 at least to 1944, outlined in the Statement, *supra*, show that she was not only a member but an extremely active and important official of the Party in Michigan.

In her brief in the Court of Appeals, this petitioner further conceded as follows (Appellants Br., pp. 12-13):

In this case the Court found that Appellant had concealed and misrepresented membership in the Communist Party because it was an organization which had "as an objective the overthrow of the government of the United States by force and violence".

Appellant does not contend that there was insufficient evidence to support such a finding. She does assert, however, for the reasons stated (p. 9) that such finding cannot sustain the Order of Cancellation.

Her only attack on the findings of fact in the Court of Appeals was her claim that the District Court had found that the "objective" of the Communist Party was the overthrow of government, rather than that the Party "taught" or "advocated" overthrow. As we show in our brief in *Nowak* (N. Govt. Br., pp. 101-105), this is an erroneous assumption since the District Court plainly found the evidence sufficient under the exact charge of the complaint; the asserted variance does not exist. See also the Statement, *supra*, pp. 14-15, for the court's findings.

The evidence in this case, moreover, overwhelmingly establishes that, not only did the Communist Party

teach and advocate the overthrow of the government, but that this petitioner had full comprehension of that fact during her long proven membership in the Party, and that she herself taught and advocated the principle of overthrow on the Party's behalf. See the Statement, *supra*. Like Nowak's case, and perhaps even more so, this is not the case of an "innocent" who joined the Communist Party without being a revolutionary, but rather this is a hard-core case of an important Party functionary, familiar with and zealous for its advocacy of overthrow, who perpetrated a fraud on the naturalization court when she concealed the material fact of her membership, and swore that she was attached to the principles of the Constitution.

B. Secondly, petitioner's adoption of the argument in *Nowak* that Question 28 included in the Preliminary Form For Petition for Naturalization was equivocal in its language (see N. Govt. Br., pp. 91-93) would not, even it were well taken, entitle this petitioner to a reversal. Her cancellation order was clearly based, not only on the willful concealment of, and misrepresentation in respect to, the fact of her membership in an organization teaching or advocating the overthrow of existing government, but also in her misrepresentations and concealment with respect to her qualifications for citizenship in her petition for naturalization and in her oath of allegiance (see *supra*, pp. 14-15). We believe that the same is true in *Nowak's* case (see N. Govt. Br., pp. 117-123), but whatever question there may be in *Nowak* as to whether the court found fraud independently of the answer to Question 28, there can be no doubt on this issue in

this case. The validity of that holding is covered by the discussion in our *Nowak* brief (N. Govt. Br., pp. 117-123).

II

The only additional issue raised by petitioner is her assertion that the new basis for cancellation specified in Section 340 (a) of the Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451 (a); see N. Govt. Br. p. 5)—the provision for cancellation on “the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation”—is ambiguous in two respects. First, she observes that this new language, which was substituted for the term “fraud” in Section 338 (a) of the Nationality Act of 1940 (8 U. S. C. (1940 ed.) 738 (a); see N. Govt. Br. pp. 4-5), is capable of being construed so broadly as to authorize cancellation in cases not involving “the kind of fraud which traditionally vitiates judgments”, and hence is capable of being unconstitutionally applied. Secondly, she contends that the elimination of illegality as a basis for denaturalization in Section 340 (a) of the 1952 Act poses an additional problem in those cases where there is no showing of fraud or a failure to satisfy some statutory requirement regarded by this Court as a condition precedent to the power of the naturalization court to act, in which case, she contends, the judgment of naturalization would be foreclosed from re-examination (M. Br., pp. 11-15).

But petitioner is wandering far afield; these issues are simply not presented in her case. The allegations

of the complaint charge "the kind of fraud which traditionally vitiates judgments" and the District Court, after having the issue drawn to its attention (Colloquy at Conclusion of Trial, pp. 14-20, 43-45), based its finding on proof of the same kind of fraud that was charged and found in *Nowak's* case where denaturalization was based on Section 338 (a) of the Nationality Act of 1940, 8 U. S. C. (1940 ed.) 738 (a). In fact, the court incorporated by reference its discussion on that issue from its *Nowak* opinion. On appeal, all parties treated the fraud issue in both cases as being identical on the facts presented.

A recent unreported decision of the Court of Appeals for the Seventh Circuit in *United States v. Minerich*, No. 12005 (December 5, 1957), has taken the position that, under Section 340 of the Immigration Act of 1952, 66 Stat. 260, 8 U. S. C. 1451 (a) (see N. Govt. Br. p. 5), proof of concealment (in the sense of passive non-disclosure of material facts) is insufficient to support a cancellation order in the absence of misrepresentation (false swearing). In that case, the Court of Appeals found no evidence to show that the applicant actually misrepresented any fact, and the case was tried on the theory that it was incumbent on him to volunteer information material to his naturalization examination and that a breach of that duty constituted concealment within the terms of Section 340 of the Immigration and Nationality Act of 1952.³ Regardless of the validity of that construc-

³ In 1928, when *Minerich* was questioned, the Preliminary Form for Petition for Naturalization was not in use (see N. Govt. Br., p. 93, fn. 31). At *Minerich's* preliminary examination

tion, however, the problem is not involved in this case because every act of concealment charged in the complaint (App. 2-8), and included in the District Court's findings (App. 26-28), is coupled with an act of active misrepresentation of the true facts material to the court's inquiry into petitioner's qualifications for citizenship. Thus, whether or not the grounds for denaturalization set forth in Section 340 of the new Act are broader than the term "fraud" in Section 338 (a) of the Nationality Act of 1940, in this case the findings of willful concealment combine with the misrepresentation of material facts to constitute "fraud" under the narrowest interpretation of the cancellation provisions of Section 340.

Since petitioner has at no time urged that Section 340 (a) of the Immigration and Nationality Act of 1952 was being too broadly applied *in her case*, or more broadly than Section 338 (a) of the Nationality Act of 1940 is being applied in *Nowak's case*, it is apparent that this case presents no real problem of interpreting the new language of the 1952 Act. This

he answered negatively and correctly when asked whether he had ever been arrested (he was subsequently arrested but was not questioned on this issue) (slip op. p. 13). The Court of Appeals distinguished this situation from that in *United States v. De Francis*, 50 F. 2d 497 (C. A. D. C.), where the applicant at the naturalization hearing stood mute when the court asked the question whether there was proof of conviction of the sale of intoxicating liquor, the truth of which was known only to him.

The Court of Appeals in *Minerich* found no evidence that Minerich was asked and denied that he was a Communist in 1928 (a second basis on which cancellation was sought) (slip op. p. 18).

Court has consistently refrained from rendering advisory opinions on hypothetical situations not necessary to the disposition of the case at hand. *Watson v. Buck*, 313 U. S. 387, 402; *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 461; *United Public Workers v. Mitchell*, 330 U. S. 75, 89.

The same argument applies with respect to the omission of illegality as a specific basis for cancellation under the new Act. The complaint alleged only concealment and misrepresentation and not illegality (App. 2-8); the findings in petitioner's case (unlike Nowak's) are based on fraud alone; and it was conceded in the legal arguments by counsel in the trial court that illegality was not involved (Colloquy at Conclusion of Trial, p. 44). Accordingly, any problem which might be involved in a hypothetical case, under the new Act, involving illegal procurement of naturalization, without proof of fraud, is not pertinent to the decision of this case.

CONCLUSION

For the foregoing reasons, and those set forth in our brief in No. 72, we respectfully submit that the judgment of the Court of Appeals should be affirmed.

J. LEE RANKIN,

Solicitor General.

RUFUS D. MCLEAN,

Acting Assistant Attorney General.

BEATRICE ROSENBERG,

CARL H. IMLAY,

Attorneys.

JANUARY 1958.

APPENDIX

C-4333671

UNITED STATES OF AMERICA,

District of Columbia, ss:

Reuben Speiser, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That one Rebecca Maisenberg filed a petition for naturalization in the United States District Court at Detroit, Michigan, on October 22, 1937 and was admitted to citizenship by that court on January 24, 1938, receiving naturalization certificate No. 4333671.

(b) That in the proceedings which led to her naturalization, the said Rebecca Maisenberg alleged under oath:

(I) That the only names ever used by her were Rebecca Rosenberg and Rebecca Maisenberg.

(II) That she fully believed in the form of government of the United States; and that she did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness

of the United States; that it was her intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the Union of Soviet Socialist Republics, of which she was a subject or citizen.

(IV) That she would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said Rebecca Maisenberg as set forth in subparagraph I (c) were false and untrue.

(d) That the said Rebecca Maisenberg has been an active member of the Communist Party of the United States since 1930; and, in connection with such membership had used and been known by the name of Rebecca or Rifka Lee.

(e) That the Communist Party of the United States is an organization which at all times since 1930, as the said Rebecca Maisenberg well knew:

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(III) Advised, advocated, or taught the unlawful damage, injury, or destruction of property;

(IV) Advised, advocated, or taught sabotage;

(V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 1 (e), I, II, III, and IV;

(VI) Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

(f) That at all of the times above mentioned, as the said Rebecca Maisenberg well knew, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organizations were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That by reason of the foregoing, the said Rebecca Maisenberg at the time she applied for and obtained naturalization: was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and do-

mestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said Rebecca Maisenberg intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to her naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340 (a) of the Immigration and Nationality Act (Public Law 414, 82nd Congress) to set aside and cancel the naturalization of said Rebecca Maisenberg as having been procured by concealment of material facts and by wilful misrepresentation.

3. That the last known place of residence of said Rebecca Maisenberg is 2493 West Philadelphia, Detroit, Michigan.

REUBEN SPEISER,
Attorney.

Subscribed and sworn to at Washington in the District of Columbia this 10th day of March 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d.1 of

Title 8 of the Code of Federal Regulations to administer oaths.

ALBERT T. REITZEL,
Assistant General Counsel.